

# **EXHIBIT B**

**Case No. 21-CV-0811-TSZ**

**(Exhibit B to Declaration of Philip P. Mann)**

The Honorable

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

ENTERPRISE MANAGEMENT LIMITED,  
INC. and DR. MARY LIPPITT,

Plaintiffs,

v.

CONSTRUX SOFTWARE BUILDERS, INC.  
and STEVE C. MCCONNELL

Defendants.

Case No.

**COMPLAINT FOR COPYRIGHT  
INFRINGEMENT, UNFAIR  
BUSINESS PRACTICES, AND  
INFRINGEMENT OF PERSONALITY  
RIGHTS**

JURY DEMAND

Plaintiffs Enterprise Management Limited, Inc. (“Enterprise”) and Dr. Mary Lippitt (“Dr. Lippitt”) (collectively “Plaintiffs”), in support of this Complaint against Defendants Construx Software Builders, Inc. (“Construx”) and Steven (*p/k/a* Steve) C. McConnell (“McConnell”) (collectively “Defendants”), do hereby allege as follows:

1. This is an action based upon violations of the Copyright Act 17 U.S.C. § 501, *et seq.*, Washington State Unfair Business Practices 19.86.010 *et seq.*, and Washington State Personality Rights 63.60.010 *et seq.*. All claims herein arise out of Defendants’ unlawful copying and distribution of Plaintiffs’ copyrighted materials. Plaintiffs seek permanent injunctive relief to enjoin Defendants from future violations, monetary damages, an award of attorney’s fees and costs, and such additional relief as this Court deems appropriate.

**THE PARTIES**

2. Plaintiff Enterprise Management Limited, Inc. is a Florida corporation with its principal place of business at 4531 Roanoak Way, Palm Harbor, Florida. Enterprise provides consulting, training, coaching, and business assessments to other businesses.

3. Plaintiff Dr. Mary Lippitt is an individual residing at 4531 Roanoak Way, Palm Harbor, Florida. Dr. Lippitt is the President of, and a shareholder of, Enterprise.

4. Defendant Construx Software Builders, Inc. is a Washington corporation with its principal place of business at 10900 NE 8<sup>th</sup> St, Suite 1350, Bellevue, Washington.

5. Defendant Steven C. McConnell is a resident of Bellevue, Washington. McConnell is the founder and CEO of Construx. McConnell is also the author of “More Effective Agile,” and the presenter of “Agile Transformation Tips – Change Model Part 1.”

**JURISDICTION AND VENUE**

6. This is a civil action for copyright infringement arising under Sections 32 and 43(a) of the Copyright Act, 17 U.S.C. § 501 et seq. and unfair business practices arising under RCW 19.86.010 *et seq.*

7. This Court has subject matter jurisdiction pursuant to 17 U.S.C. § 501, et seq. and 28 U.S.C. §§ 1331 and 1338(a).

8. This Court has supplemental jurisdiction over the claims in this Complaint that arise under the law of the State of Washington pursuant to 28 U.S.C. § 1367(a), because the State law claims are so related to the federal claims that they form the same case or controversy and derive from a common nucleus of operative facts.

9. This Court has personal jurisdiction over Defendants, who have and are engaged in business activities in and directed to Washington.

10. Venue is proper in this District under 28 U.S.C. § 1400(a) because both Construx and McConnell are residents of this District. Further, Construx maintains its principal place of business in this district, and its officers are located in this district. Venue is also proper under 28

1 U.S.C. § 1391(b) as a substantial part of the events or omissions giving rise to the claim occurred  
2 in this District.

3 **FACTUAL BACKGROUND AND GENERAL ALLEGATIONS**

4 **Enterprise Management**

5 11. Enterprise is a consulting organization that provides business-consulting services  
6 that help organizations develop strategies to capture the benefits of new opportunities, enhance  
7 engagement, ensure execution, and evaluate systems for maximum return.

8 12. Among other things, Enterprise facilitates, trains, and consults on change  
9 initiatives, introducing new technology, gaining support for new initiatives, improving cross-  
10 functional collaboration, boosting innovation, or enabling new leaders to quickly build their  
11 team.

12 13. As part of its business, Enterprise develops, advertises, markets, and distributes  
13 written materials discussing its management systems and methods as a means for facilitating its  
14 business-consulting services.

15 **Dr. Lippitt's Copyrighted Materials**

16 14. Since at least as early as 1986, Dr. Lippitt has been developing and refining a  
17 system for managing complex organizational change.

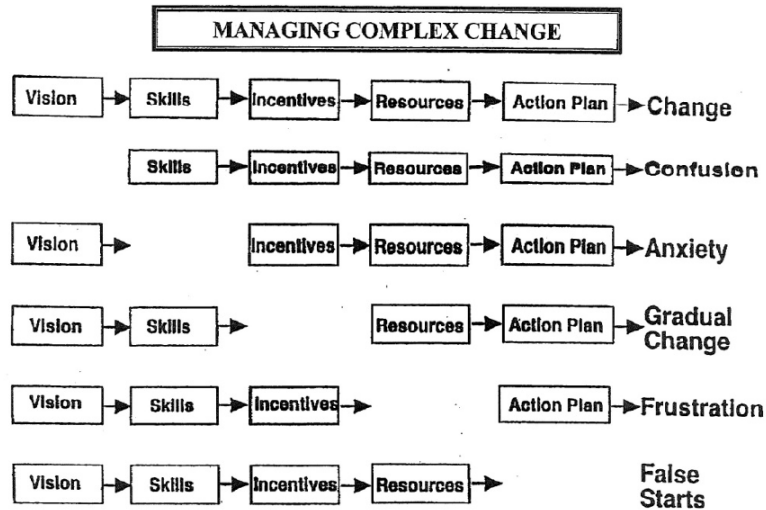
18 15. Between 1987 and 2003, Dr. Lippitt developed a set of creative graphic and  
19 literary works ("Dr. Lippitt's Works" or "Works") that present her system for managing complex  
20 organizational change.

21 16. The Works are famous in the field.

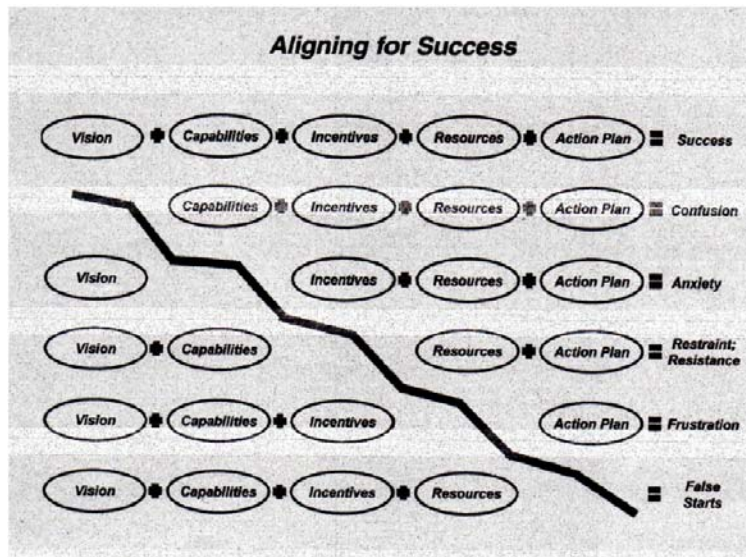
22 17. The Works are currently licensed to Enterprise for use by Enterprise in its various  
23 consulting and educational engagements.

24 18. At the heart of each of Dr. Lippitt's Works are single page graphics variously  
25 entitled "Managing Complex" and "Aligning for Success."  
26

19. A version of a chart from 1987 entitled “Managing Complex Change” is as follows:



20. Another version of the chart, entitled “Aligning for Success” is as follows:



21. Dr. Lippitt registered copyrights on her works.

22. In 1987, Dr. Lippitt registered the Managing Complex Change chart, which is protected under U.S. Copyright Registration Nos. TX 2-124-202.

23. In 1990 and 1993, Dr. Lippitt registered the Aligning for Success chart, which is protected under U.S. Copyright Registration Nos. TXu 956-226 and TX 5-827-350 respectively.

24. U.S. Copyright Registration Nos. TX 2-124-202, TXu 956-226 and TX 5-827-350 are valid copyright registrations, which are duly and properly registered with the United States Copyright Office.

25. A true and correct copy of the U.S. Copyright Registration Certificate for these registrations are attached as Exhibit A and incorporated by reference.

26. The Works are exclusively licensed to Enterprise for use in Enterprise's consulting business.

27. Enterprise and Dr. Lippitt used the Managing Complex Change chart in numerous presentations, training sessions and consulting engagements between 1987 and 1999 to a wide variety of organizations Aligning for Success chart between 1999 and the date of this Complaint to a wide variety of organizations.

28. Enterprise has sold various publications including one or more of the Works, to those who wish to purchase such publications for distribution in training programs.

29. Enterprise licenses the Works to organizations and businesses.

30. The Works have never been published to the general public.

### **Defendants**

31. Construx is a training and consulting firm that works primarily in the software industry.

32. Steve McConnell is the Founder and CEO of Construx. McConnell has authored numerous books, training programs, videos, and presentations on training and consulting topics, including organizational change.

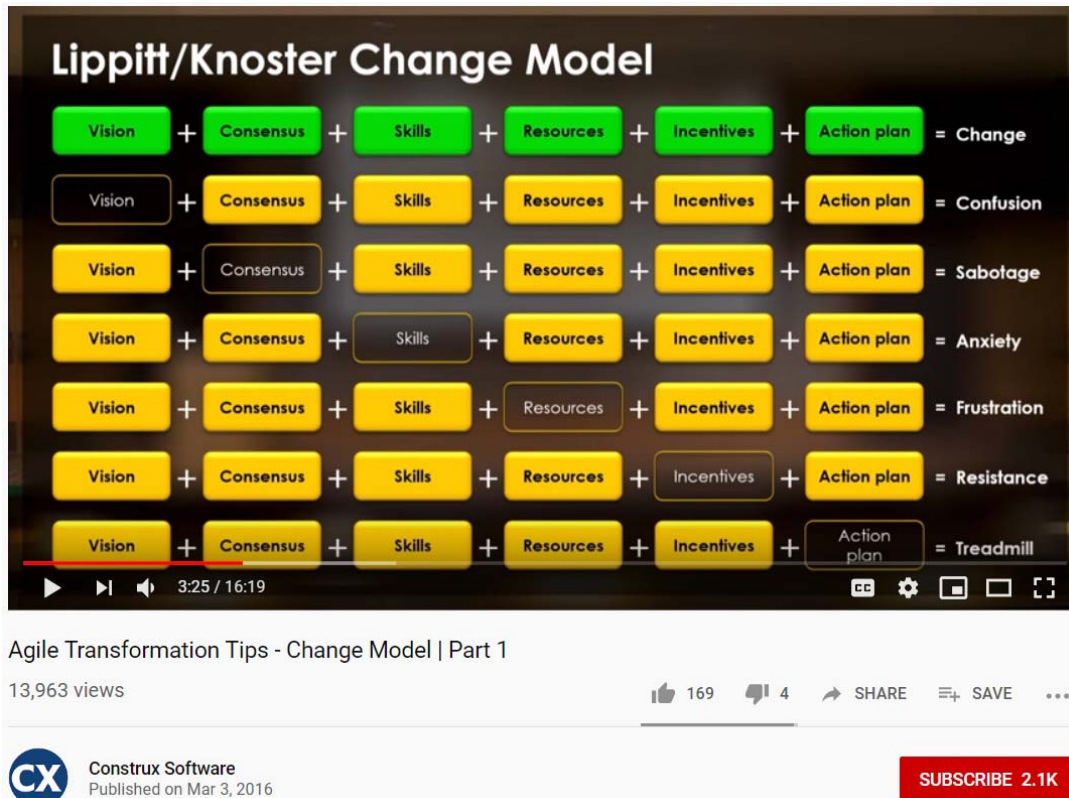
### **Defendants' Infringing Activities**

#### **YouTube Video -**

33. In the first quarter of 2019, it came to Enterprise's attention that Construx was copying and using Dr. Lippitt's diagram as a part of its business activities.

34. Construx published a YouTube video entitled “Agile Transformation Tips – Change Model Part 1,”<sup>1</sup> (“the video” or “the YouTube video”) which McConnell presents.

35. At the 3:25 minute mark in the video entitled “Agile Transformation Tips – Change model Part 1”, the following chart appears:



36. At the 2:21 minute mark, McConnell specifically identifies Dr. Lippitt as the author of the original Work upon which the chart appearing at the 3:25 minute mark, and depicted above, is based:

<sup>1</sup> As of the filing of the Complaint, the YouTube video is available here:  
<https://www.youtube.com/watch?v=YqAYJASbze4&t=289s>





Agile Transformation Tips - Change Model | Part 1

13,963 views

169

4

SHARE

SAVE

...



Construx Software  
Published on Mar 3, 2016

SUBSCRIBE 2.1K

37. Around the 2:21 minute mark, McConnell attributes the change model to Dr. Lippitt stating, “the specific change model in this talk is inspired by Mary Lippitt and Tim Knoster . . .”

38. Attribution to Mr. Knoster is incorrect.

39. Mr. Knoster did not author any part of, and has no legal interest in the Works.

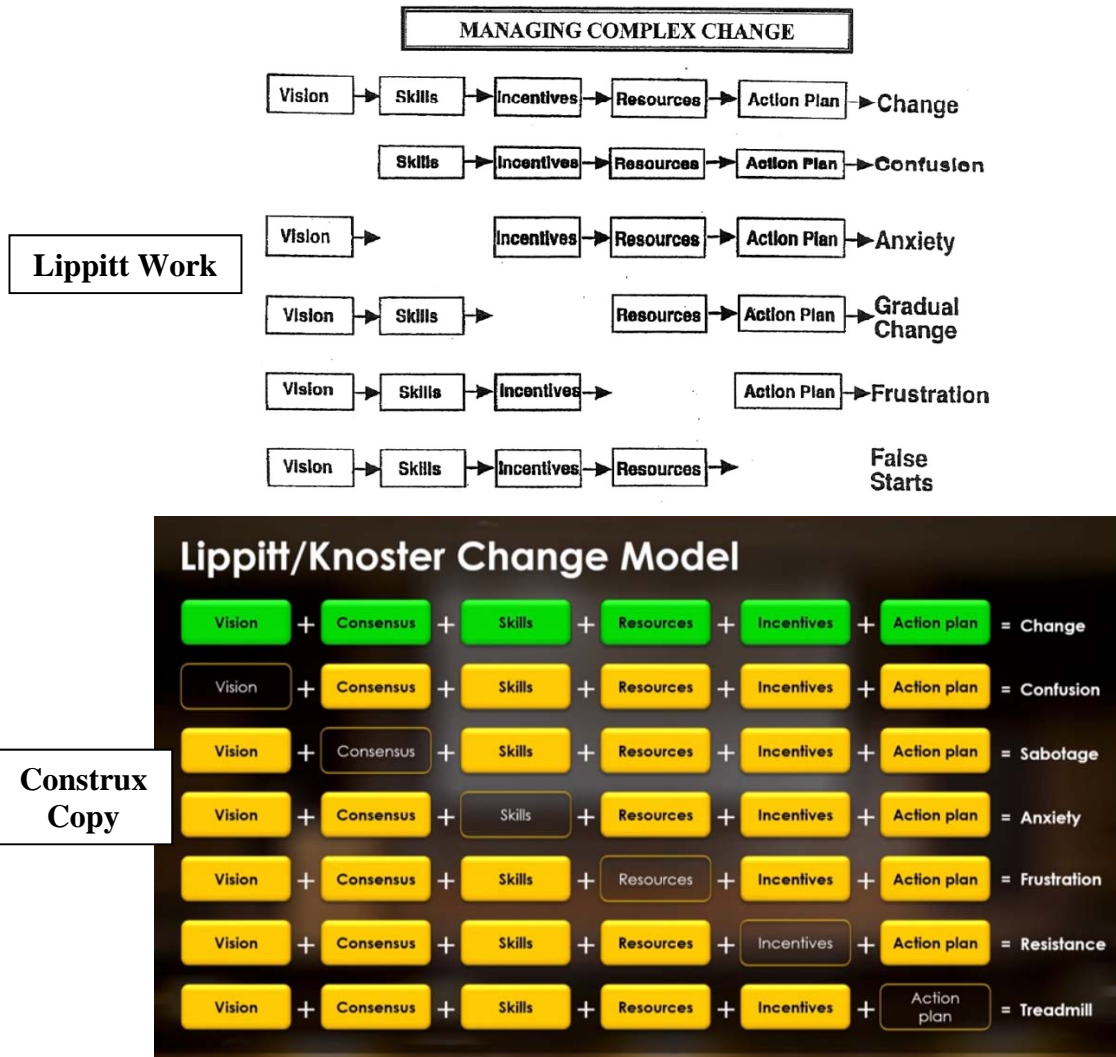
40. On information and belief, Mr. Knoster did not give Construx permission to use his name.

41. The remainder of the YouTube video discusses individual components of Dr. Lippitt’s copyrighted work.

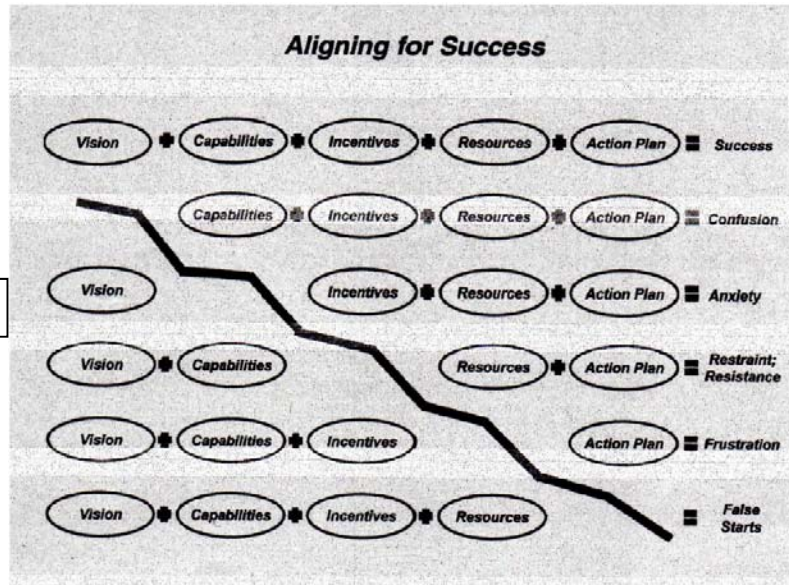


42. The chart published by Construx infringes Enterprise's rights in Dr. Lippitt's Works.

43. A simple comparison of the infringing chart with Dr. Lippitt's chart illustrates copying:



### Lippitt Work



44. There are only a few differences when comparing Dr. Lippitt's Works to Construx's infringing chart.

45. These minor changes include: 1) the addition of a column "Consensus;" 2) flipping the "Resource" and "Inventive" columns; and 3) Construx utilizes synonyms for the result in the far right column, e.g. "Treadmill" in exchange of "False Starts."

46. The Construx chart is at least a derivation of Dr. Lippitt's work.

47. Neither Construx nor McConnell ever received permission to use the Work appearing in the YouTube video.

48. Neither Construx nor McConnell ever received permission to use Dr. Lippitt's name in the YouTube video.

49. Construx included the following "Copyright Notice" at the end of the YouTube video:



50. Construx understands and is aware of Copyright law and sought to preserve its rights in the YouTube video.

51. As of the filing of this complaint, the video has been viewed at least 13,963 times.

52. As of the filing of this complaint, despite requests from Dr. Lippitt, the video has not been taken down.

53. Construx and McConnell are aware that on nearly identical facts, the 10<sup>th</sup> circuit upheld Dr. Lippitt's copyright in the Works and found Defendants' strikingly similar conduct infringing. *See Lippitt v. Warrick*, 717 F3d 1112 (10<sup>th</sup> Cir. 2013).

#### **Infringing Use in Print – “More Effective Agile”**

54. Construx published and is currently printing a book titled “More Effective Agile,” authored by Construx CEO Steven McConnell.

55. In the book, McConnell describes “a change model that is inspired by the work of Tim Knoster, which I will refer to as the ‘Domino Change Model.’”

56. The book goes on to describe that “a successful organization change requires these elements: Vision, Consensus, Skills, Resources, Incentives, Action Plan . . . . If all elements are present, a successful change occurs.”

57. The change model described is Dr. Lippitt’s.

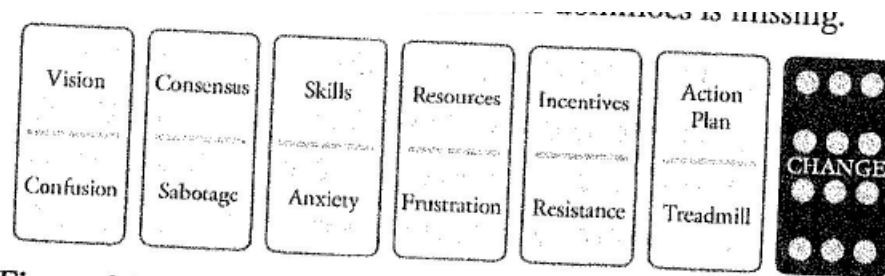
58. Construx’s attribution of the change model is limited to Knoster.

59. Dr. Lippitt is not mentioned.

60. Construx was aware, at the time of publishing, that Dr. Lippitt is the source of the change model (*see* YouTube video).

61. On information and belief, Construx and McConnell were aware of Dr. Lippitt’s interest in the Works and the described change theory prior to printing “More Effective Agile.”

62. The following figure is included which describes the “Domino Change Model” (“DCM”):



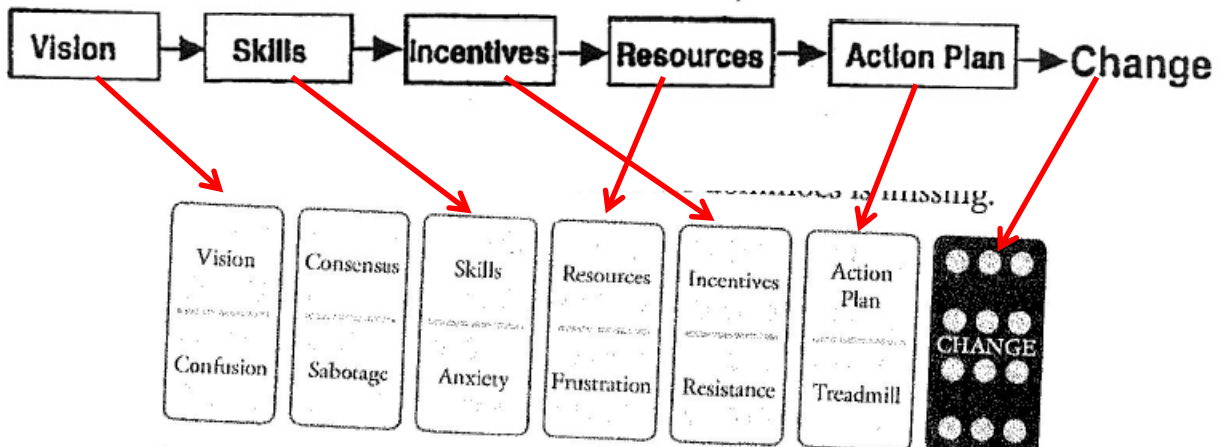
**Figure 23-1**

*The Domino Change Model describes required elements for change and the effects of each missing element.*

63. The DCM includes six elements for success in the upper position, and the consequence of a plan lacking the upper element is listed at the lower position. For example, a lack of vision (top left) results in confusion (bottom left).

64. This is nothing more than at best a derivative of Dr. Lippitt’s Works.

### Lippitt Model

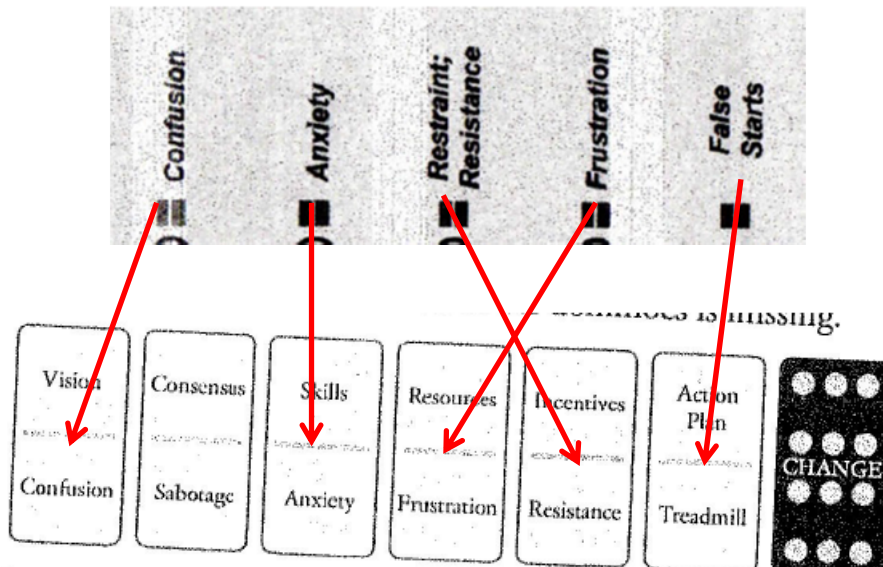


### Construx / McConnel

65. There are only two changes from the top line of Dr. Lippitt's Works. First, the addition of Consensus, and second, the rearrangement of incentive and resources.

66. The bottom side of each "domino" also copies Dr. Lippitt's Works.

### Lippitt Model



### Construx / McConnel



67. There are only three minor changes from Dr. Lippitt's Works. These minor changes are: 1) the addition of Sabotage; 2) rearrangement of Resistance and Frustration; and 3) the use of the synonym "treadmill" for false starts.

68. The DCM found that Construx's new book copies a substantial portion of Dr. Lippitt's work both in quantity and quality; it goes to the heart of the Works.

69. Construx did not receive permission from Dr. Lippitt or Enterprise to use the Works in fashioning its DCM diagram.

70. As a result of Construx uses of the Works, Plaintiffs' intellectual property is being used by a competitor, without a license, to further the competitors business.

**Enterprise's Attempts to Resolve this Matter**

71. On or about May 17, 2019, Counsel for Enterprise sent a letter to Construx informing Construx and McConnell of their infringement of the Lippitt Works.

72. Construx replied with its own letter on or about May 29, 2019.

73. Construx's letter relies on assumptions and conclusions previously dismissed by the 10<sup>th</sup> circuit.

74. Construx has yet to remove any of its infringing materials.

75. Enterprise attempted to meet and confer with Construx for weeks, but Construx did not meet and confer with Enterprise.

**Defendants' Infringement is Willful**

76. Defendants' violations are willful, deliberate and committed with prior notice and knowledge of Enterprise's copyrights.

77. The Parties are in the same industry

78. The Parties offer many of the same services.

79. Defendants' conduct has caused and continues to cause significant and irreparable harm to Enterprise.

80. Enterprise brings this action to recover damages for the harm it has sustained, to impose a constructive trust upon Defendants' illegal profits and assets purchased with those profits, and to obtain injunctive relief prohibiting Defendants from further violations and infringements.

### **COUNT I – COPYRIGHT INFRINGEMENT**

81. Enterprise realleges and reincorporates herein by reference the allegation contained in Paragraphs 1 through 80 of this Complaint as set forth above.

82. Enterprise is the owner of the right, title, and interest in various copyrighted charts registered with the United States Copyright Office. *See* Exhibit A.

83. Defendants have infringed one or more of the Works under 17 U.S.C. § 501, et seq. by copying and distributing, without any authorization or approval from Enterprise or Dr. Lippitt, copies of the Works and or making other infringing uses of the Works.

84. Defendants are liable to Enterprise under 17 U.S.C. § 504 for either or both the copyright owner's actual damages and any additional profits of the infringer, or statutory damages.

85. Furthermore, since Defendants willfully and flagrantly infringed one or more of the Works, on multiple occasions, Defendants are liable to Enterprise for maximum statutory damages, per work, under 17 U.S.C. § 504(C)(2).

86. Furthermore, Enterprise is entitled to injunctive relief under 17 U.S.C. § 502 and to an order impounding all infringing materials under 17 U.S.C. § 503.

87. Finally, particularly in light of the Defendants' willful and flagrant violations of 17 U.S.C. § 505, Enterprise is also entitled to recover its attorney's fees and costs.

### **COUNT II – CONSUMER PROTECTION ACT.**



1 88. Enterprise realleges and reincorporates herein by reference the allegation  
2 contained in Paragraphs 1 through 87 of this Complaint as set forth above.

3 89. Defendants are using charts that are identical to, confusingly similar to, or  
4 derivative from, charts in one or more of Enterprise and Dr. Lippitt's copyrighted Works in  
5 connection with goods and services that are the same as Plaintiffs, without consent from  
6 Plaintiffs.

7 90. By knowingly profiting from, publishing, providing to the public for free, and  
8 using Plaintiffs' copyrighted works in connection with competing goods and services,  
9 Defendants' committed unfair methods of competition and unfair or deceptive acts or practices  
10 in the conduct of any trade or commerce under RCW 19.86.020.

11 91. Defendants have been injured in their business by Defendants unfair trade  
12 practices.

13 92. Plaintiffs seek damages, treble damages, and attorney fees pursuant to RCW  
14 19.86.090.

15 **COUNT III – PERSONALITY RIGHT UNDER RCW 63.60.010 et seq.**

16 93. Enterprise realleges and reincorporates herein by reference the allegation  
17 contained in Paragraphs 1 through 92 of this Complaint as set forth above.

18 94. Plaintiff has a property right in the control and use of her name, including as  
19 associated with the Works, and the ideas encompassed by the Works.

20 95. Defendants knowingly used Dr. Lippitt's name in their YouTube video.

21 96. Defendants did not have permission to use Dr. Lippitt's name.

22 97. Defendants' actions constitute a violation of Dr. Lippitt's rights under 63.60.050

23 98. Plaintiffs seek damages and fees pursuant to RCW 63.60.060.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Enterprise respectfully requests judgment as follows:  
26

1           A.     A permanent injunction enjoining Defendants, their agents or assigns from  
2 reproducing, preparing, distributing, selling, using, or displaying derivative works based on Dr.  
3 Lippitt's Works without authorization from Dr. Lippitt or Enterprise;

4           B.     An award of Plaintiffs' special, actual and statutory damages as follows:

5           i.     Plaintiffs' damages and Defendants' profits pursuant to 17 U.S.C. § 504(b), or,  
6 alternatively, enhanced statutory damages, per work, pursuant to 17 U.S.C. §  
7 504(c) and 17 U.S.C. § 504(c)(2), for Defendants' willful infringement of the  
8 Copyrighted Works;

9           ii.    Plaintiffs' damages and Defendants' profits pursuant to 17 U.S.C. § 1203(c)(2), or  
10 alternatively, statutory damages pursuant to 17 U.S.C. § 1203(c)(3); and

11          iii.   Plaintiffs' damages and Defendants' profits as allowed by State law under RCW  
12 19.86.010 et seq. and 63.60.010 et seq..

13          C.     An award of costs and attorneys' fees to Plaintiffs under 17 U.S.C. § 505 and  
14 RCW 19.86.090 or any other applicable statutory provision; and

15          D.     Such other and further relief as the Court deems just and proper.

16  
17 DATED the 11<sup>th</sup> day of September, 2019.

18                                   *Respectfully submitted,*

19                                   By: Benjamin Hodges

20 Benjamin Hodges, WSBA 49301

21 Kevin Ormiston, WSBA 49835

22 FOSTER PEPPER PLLC

23 1111 Third Avenue, Suite 3000

24 Seattle, Washington 98101-3292

25 Telephone: (206) 447-4400

26 Facsimile: (206) 447-9700

Email: ben.hodges@foster.com;

kevin.ormiston@foster.com

*Attorneys for Enterprise Management  
Limited, Inc. and Dr. Mary Lippitt*